

# Notice of Allowability

Application No.

10/664,410

Examiner

Carl H. Layno

Applicant(s)

GIROUARD ET AL.

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## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Papers filed June 22, 2006.
2. ☒ The allowed claim(s) is/are 1-17.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 6/22/06
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

### **DETAILED ACTION**

1. Acknowledgment is made of applicant's amendment, which was received by the Office on June 22, 2006.
2. Claims 1-17 are active and pending.

#### ***Information Disclosure Statement***

3. Acknowledgment is made of applicant's Information Disclosure Statement (PTO-1449), which was received by the Office on June 22, 2006.

#### ***Claim Rejections - 35 USC § 102***

4. Upon further reconsideration of applicant's arguments and the Examiner's claim amendment below, the Examiner is withdrawing the 35 U.S.C 102(e) rejection of Zhu et al (US 2002/0169480 A1), which was made against claims 1-3, 6, 10 and 17 in the last Office action.

#### ***Examiner's Amendment***

5. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with J. Kevin Parker on August 25, 2006.

The application has been amended as follows:

-p.1 of specification, change the first paragraph to read as follows:

"This application is a continuation-in-part of U.S. Patent Application Serial No. 10/298,156, filed on November 1, 2002, now U.S. Patent No. 7,065,405, the specification of which is incorporated herein by reference."

-Re-write claim 1 to read as follows:

"1. A method for treating coronary artery disease in a patient, comprising:  
placing a pacing electrode in proximity to a pacing site which is located near a site of atherosclerotic plaque within an intra-myocardial portion of the coronary artery; and,  
delivering pacing pulses to the pacing site in a manner which pre-excites the pacing site such that it contracts prior to other areas of the myocardium during a cardiac cycle."

***Allowable Subject Matter***

6. Claims 1-17 are allowed.

***Reasons for Allowance***

7. The following is an examiner's statement of reasons for allowance:

As amended, claim 1 now specifies that the step of "delivering pacing pulses" to a pacing site "pre-excites" that site "such that it contracts" before other areas of the myocardium. This differs from the prior art teaching of Zhu et al (US 2002/0169480) (cited by the Examiner in the last Office Action), which recites the use of "non-excitatory" signals for plaque prevention (p.3, paragraph [0024], lines 18-19) since applicant's pre-excitation pulses have the ability to excite cardiac tissue to the point of contraction (i.e. capture). Unable to find this method step in

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combination with the applicant's other claimed method steps in the prior art, the Examiner deems independent claim 1 and its depending claims to be allowable.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### *Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

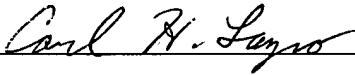
The Chekanov (US 6,201,991) and Eggers et al (US 5,366,443) patents describe methods and apparatus' for treating plaque build up in a variety of blood vessels. Unlike applicant's device, neither device appears to be capable of generating a pulse that "pre-excites" a portion of the heart near a coronary artery in the manner claimed by the applicant.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl H. Layno whose telephone number is (571) 272-4949. The examiner can normally be reached on 9/4/5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



CARL LAYNO  
PRIMARY EXAMINER

CHL  
8/25/2006